

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 ILONA SHAMIS, :
 Plaintiff, :
 :
 -against- :
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 SOLIL MANAGEMENT, LLC et al., :
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 Defendants. :
 :
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USDC SDNY
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20-CV-7064 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

On February 16, 2021, Plaintiff filed a motion to dismiss Defendants' counterclaims. (Doc. 19.) Federal Rule of Civil Procedure 15(a)(1) permits a party to amend a pleading as a matter of course 21 days after service of a Rule 12(b) motion, a rule that applies to counterclaims. *See Fed. R. Civ. P. 13 Notes of Advisory Committee on 2009 Amendments* ("An amendment to add a counterclaim will be governed by Rule 15."). Under Rule 15(a)(1), therefore, Defendants had until March 9, 2021 to amend their answer and counterclaim as a matter of course.

While I granted the parties' consent motion to extend the briefing schedule related to Plaintiff's motion to dismiss and gave Defendants until March 16, 2021 to respond to that motion, (Doc. 21), I did not interpret that as motion as Plaintiff consenting to Defendants filing an amended answer or counterclaim. On March 16, 2021, Defendants filed an amended answer and counterclaim, without a motion for leave or an indication of Plaintiff's consent. *See Fed. R. Civ. P. 15(a)(2)*. This filing is therefore untimely. Defendants also did not submit a response to Plaintiff's motion to dismiss.

Accordingly, it is hereby:

ORDERED that Defendants' amended answer and counterclaim is untimely.

IT IS FURTHER ORDERED that, to the extent Defendants seek to file an amended answer and counterclaim, they should re-file it on or before March 22, 2021. Any such filing should indicate whether Plaintiff consents in writing and, if Plaintiff does not, the filing should include a motion for leave from the Court. I will issue a subsequent order after March 22, 2021 with regard to subsequent briefing schedules.

SO ORDERED.

Dated: March 19, 2021
New York, New York


Vernon S. Broderick
Vernon S. Broderick
United States District Judge